

Attorney Docket #: E6026-490
App. Serial No.: 10/825,517
Art Unit: 3641
Amendment: February 5, 2007

REMARKS

This reply is responsive to the non-office action mailed October 5, 2006 ("Office Action"). Applicant thanks the Examiner for the indication of allowable subject matter in claim 6. Claim 6 has been rewritten in independent form to include all the limitations of the claims from which it depends and is in condition for allowance. Claims 1-11, 14, 15, 19, 20, and 26 have been amended. Withdrawn claims 28-30 have been cancelled without prejudice or disclaimer to place the application in condition for allowance. Claims 24, 25, and 27 have also been cancelled without prejudice or disclaimer. New claims 31-35 have been added and read on the apparatus of Invention I previously elected in response to an earlier restriction requirement. Claims 1-23, 26, and 31-35 remain pending in the application. The claim rejections are addressed below. No new matter is added.

CLAIMS REJECTIONS

Rejections under 35 U.S.C. § 112:

Claims 1-19 stand rejected under 35 U.S.C. 112, second paragraph for lack of antecedent basis with respect to various claim limitations. These claims have been amended as required to address and overcome these rejections. Accordingly, Applicants respectfully request the claim rejection be withdrawn.

Rejections under 35 U.S.C. § 102(b) and § 103(a):

Claims 1-4, 9, 14, 15, 20, and 21 stand rejected as being anticipated by United States Patent 6,256,915 to da Silveria ("Silveira"). Claims 1, 15, and 20 are independent. This rejection is respectfully traversed for the reasons presented below.

Attorney Docket #: E6026-490
App. Serial No.: 10/825,517
Art Unit: 3641
Amendment: February 5, 2007

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). "To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." MPEP 2143.02 (citing *In re Royka*, 490 F.2d 981 (CCPA 74)). Furthermore, "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP 2143.02 (citing *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970)).

The preamble of independent claims 1, 15, and 20 have been similarly amended to clarify that Applicant's claimed invention is directed to a "centerfire autoloading pistol with pinless loaded chamber indicator."

Independent claim 1 requires:

a housing having an external surface and defining a chamber to receive a cartridge having a rim, the housing further including an edge defining a fulcrum;

a rigid movable indicating element having a first end, a second end, and a center equally-spaced therebetween, the indicating element pivotally engaged with the edge between the center and one of the ends to define a pinless pivot, wherein the indicating element is positioned in the housing to contact the rim of the cartridge and is movable to a position in which the indicating element protrudes outwards from the external surface of the housing to provide a user of the pistol with a visual and tactile indication that the cartridge is loaded in the chamber.

Attorney Docket #: E6026-490
App. Serial No.: 10/825,517
Art Unit: 3641
Amendment: February 5, 2007

Silveira does not teach or fairly suggest a pinless loaded chamber indicator as now recited in amended claim 1. Silveira discloses a loaded chamber indicator (07) that is pivotally mounted in the side of the pistol via cartridge extractor pin 04 (*see, e.g.*, FIGS. 3 & 6). The indicating element is not pivotally engaged with an edge in the pistol housing between the center and one of the ends to define a pinless pivot, as required by claim 1. Accordingly, amended claim 1 is not anticipated by Silveira.

Moreover, considering Applicant's invention as a whole, MPEP 2141.02 (citing *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530 (Fed. Cir. 1983)), Applicant's claimed structure provides an indicator that overcomes the disadvantages of known past indicators used in centerfire pistols such as disclosed by Silveira that rely on pinned connections for pivotally mounting the indicator. As expressly noted in Applicant's disclosure, such pinned connections are susceptible to malfunctioning caused by breakage of the pins or sticking due to dirt and carbon residue that build up in the chamber area of the pistol from discharging the firearm. (*See, e.g.*, Background of the Invention, paragraph 0004; and paragraph 0066.) In addition, removal of the indicators with pinned connections during field stripping of the pistol for cleaning or repair often requires the use of additional tools such as punch to drive the pin out. Furthermore, the small pins are easily lost in the field especially during combat conditions. By contrast, Applicant's claimed invention provides a pinless loaded chamber indicator that uses an edge defined by the pistol housing to pivotally engage the indicating element. This eliminates the more fragile pinned connection and is by contrast advantageously "mechanically simple and reliable" (Applicant's disclosure, paragraph 0066). To disassemble and field strip a pistol having Applicant's claimed loaded chamber indicator, the edge in the housing (which in some non-

Attorney Docket #: E6026-490
App. Serial No.: 10/825,517
Art Unit: 3641
Amendment: February 5, 2007

limiting embodiments may be formed on a removable rear sight) is disengaged from the indicating element and the element is simply lifted out of the pistol. To reassemble the pistol, the indicating element is simply placed back in the pistol and re-engaged with the edge.

In sum, claim 1 is believed to be allowable. Dependent claims 2-5 and 8-14 depend directly or indirectly from independent claim 1 and include all of its limitations. Accordingly, these dependent claims are believed to be allowable based on the allowability of claim 1 and for the additional limitations added by these claims which further distinguish over the prior art.

Similarly in pertinent part to claim 1, independent claim 15 requires:

a reciprocating slide having an external surface and an edge defining a fulcrum;
a chamber to receive a cartridge having a rim, the chamber disposed in the slide; and
a one-piece elongated rigid indicating element having a front end, a second rear end, and a mid-portion between the ends, the indicating element pivotally engaged proximate to the rear end with the edge of the slide to define a pinless pivot and positioned in the slide to contact the cartridge;

wherein the indicating element is pivotally displaceable without bending by contact with the rim of the cartridge to a loaded-chamber-indication position in which the indicating element protrudes outwards beyond the external surface of the slide.

For at least the same reasons discussed above in conjunction with claim 1 which contains similar underlined limitations to claim 15, Silveira does not teach or fairly suggest a pinless loaded chamber indicator as now recited in amended claim 15. In addition, Silveira is a two-piece indicator and thus does not meet the limitation of claim 15 requiring that the indicator be one-piece. Accordingly, claim 15 is believed to be allowable. Dependent claims 16-19 depend

Attorney Docket #: E6026-490
App. Serial No.: 10/825,517
Art Unit: 3641
Amendment: February 5, 2007

directly or indirectly from independent claim 15 and include all of its limitations. Accordingly, these dependent claims are believed to be allowable based on the allowability of claim 15 and for the additional limitations added by these claims which further distinguish over the prior art.

Similarly in pertinent part to independent claims 1 and 15, independent claim 20 requires:

- a housing having an external surface and an edge defining a fulcrum;
- a chamber to receive a cartridge having a rim and disposed in the housing; and
- a bar-shaped rigid lever having a first end, a second end, and a mid-portion between the two ends, the lever pivotally engaged with the edge of the housing to define a pinless pivot proximate to the first end, the lever positioned in the housing to contact the rim of the cartridge, wherein the second end and mid-portion of the lever are both unconstrained and displaceable in relation to the housing by contact of the lever with the rim of the cartridge to a loaded-chamber-indication position such that at least part of the lever protrudes outwards beyond the external surface of the housing to provide a user of the pistol with a visual and tactile indication that the cartridge is loaded in the chamber.

For at least the same reasons discussed above in conjunction with claims 1 and 15 which contain similar underlined limitations to claim 20, Silveira does not teach or fairly suggest a pinless loaded chamber indicator as now recited in amended 20. Accordingly, claim 20 is believed to be allowable. Dependent claims 21-23 and 26 depend directly or indirectly from independent claim 20 and include all of its limitations. Accordingly, these dependent claims are believed to be allowable based on the allowability of claim 20 and for the additional limitations added by these claims which further distinguish over the prior art.

Attorney Docket #: E6026-490
App. Serial No.: 10/825,517
Art Unit: 3641
Amendment: February 5, 2007

Claims 1-3, 5, 7, and 15 stand rejected as being anticipated by United States Patent 1,896,820 to Jolidon ("Jolidon"). Claims 1 and 15 are independent. Claim 7 has been amended to depend from claim 6, which was rewritten to be allowable per the Examiner's suggestion and should be allowable. The rejection of the remaining claims is respectfully traversed for the reasons presented below.

Jolidon does not teach or fairly suggest a pinless loaded chamber indicator as now recited in amended claim 1 (reproduced above). Jolidon discloses an indicator formed from an elastic flat spring (presser 62) having a protrusion or pin 61 connected at one end (*see* FIG. 18 and page 3, second column line 125 to page 4, first column line 20). The presser spring contacts a cartridge in the chamber and the pin slightly protrudes outwards from the side of the pistol. Jolidon does not disclose a "housing further including an edge defining a fulcrum" or "a rigid movable indicating element ... pivotally engaged with the edge between the center and one of the ends to define a pinless pivot," as required by claim 1. Accordingly, claim 1 is not anticipated by Jolidon. Moreover, considering Applicant's claimed invention as a whole, MPEP 2141.02 (citing *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530 (Fed. Cir. 1983)), Jolidon is typical of the old type of known indicators expressly mentioned in Applicant's disclosure that functions with a "thin elastic member" that is fixed to a pistol housing at one end and has a "small projection" at the opposite end that contacts the cartridge. This type of loaded chamber indicator is "physically deflected outwards only by a very small amount by the cartridge casing." (*See* Applicant's Background of the Invention, paragraph 0003.) As shown in FIG. 3, Jolidon's loaded chamber indicator pin protrudes outwards from the pistol housing only slightly when displaced by a cartridge making it not readily visually or tactilely perceptible to a user. By

Attorney Docket #: E6026-490
App. Serial No.: 10/825,517
Art Unit: 3641
Amendment: February 5, 2007

contrast, Applicant's loaded chamber indicator advantageously provides a large elongated protruding surface when displaced by a cartridge which is easily visually and tactilely perceptible. For all foregoing reasons, claim 1 is believed to be allowable. Dependent claims 2-5 and 8-14 depend directly or indirectly from independent claim 1 and include all of its limitations. Accordingly, these dependent claims are believed to be allowable based on the allowability of claim 1 and for the additional limitations added by these claims which further distinguish over the prior art.

Jolidon also does not teach or fairly suggest a pinless loaded chamber indicator as now recited in amended claim 15 (reproduced above). Jolidon does not disclose "a reciprocating slide having an external surface and an edge defining a fulcrum" or "a one-piece elongated rigid indicating element having a front end, a second rear end, and a mid-portion between the ends, the indicating element pivotally engaged proximate to the rear end with the edge of the slide to define a pinless pivot." In addition, the loaded chamber indicator disclosed by Jolidon is a two-piece construction, not one-piece as required by claim 15. In sum, Jolidon does disclose each and every element of claim 15 and therefore does not anticipate claim 15. Accordingly, claim 15 is believed to be allowable. Dependent claims 16-19 depend directly or indirectly from independent claim 15 and include all of its limitations. Accordingly, these dependent claims are believed to be allowable based on the allowability of claim 15 and for the additional limitations added by these claims which further distinguish over the prior art.

Claims 1-5, 9-21, and 24-26 stand rejected as being anticipated by Luger (shown in Small Arms of the World). Claims 24 and 25 are cancelled rendering those rejections moot. Claims 1,

Attorney Docket #: E6026-490
App. Serial No.: 10/825,517
Art Unit: 3641
Amendment: February 5, 2007

15, and 20 are independent. This rejection is respectfully traversed for the reasons presented below.

Luger does not teach or fairly suggest a pinless loaded chamber indicator as now recited in amended claim 1 (reproduced above). Luger discloses an extractor that doubles as a loaded chamber indicator and has a fork-like structure at the rear. Unlike Applicant's claimed pinless loaded chamber indicator, the extractor/indicator in the Luger is mounted to the pistol and pivots about a pinned connection. (See Small Arms of the World, cross-sectional drawing on page 117; see also <http://www.lugerforum.com/> >Technical Information>Parts Lists & Disassembly, showing exploded view of parts with extractor/indicator pin 011 and disassembly diagrams # 22-24 showing steps including removal of the extractor/indicator pin). Luger does not disclose a "housing further including an edge defining a fulcrum" or "a rigid movable indicating element ... pivotally engaged with the edge between the center and one of the ends to define a pinless pivot," as required by claim 1. Claim 1 also requires that the "indicating element is positioned in the housing to contact the rim of the cartridge and is movable to a position in which the indicating element protrudes outwards from the external surface of the housing to provide a user of the pistol with a visual and tactile indication that the cartridge is loaded in the chamber." As shown in the figure on page 117 of Small Arms of the World, the extractor/indicator necessarily engages the cartridge extractor groove in front of the rim to pull the spent cartridge from the chamber after firing the pistol. Luger does not the rim as required by claim 1. Accordingly, the extractor/indicator in the Luger does not protrude outwards as far as Applicant's claimed indicator which advantageously contacts and rests on the rim of the cartridge when loaded in the chamber so it more noticeable to the user. For all of the foregoing reasons, claim 1 is not anticipated by

Attorney Docket #: E6026-490
App. Serial No.: 10/825,517
Art Unit: 3641
Amendment: February 5, 2007

Luger which does not teach or suggest the loaded chamber indicator as now claimed. Moreover, considering Applicant's claimed invention as a whole, and for the same reasons discussed above in conjunction with claim 1 and the Silevira reference, Luger like Silevira both teach a pinned connection with its inherent drawbacks as noted previously and described in Applicant's own disclosure.

Accordingly, claim 1 is distinguishable from Luger and believed to be allowable.

Dependent claims 2-5 and 8-14 depend directly or indirectly from independent claim 1 and include all of its limitations. Accordingly, these dependent claims are believed to be allowable based on the allowability of claim 1 and for the additional limitations added by these claims which further distinguish over the prior art.

Luger also does not teach or fairly suggest a pinless loaded chamber indicator as now recited in amended claim 15 (reproduced above). Luger does not teach or suggest "a reciprocating slide having an external surface and an edge defining a fulcrum" or "the indicating element pivotally engaged proximate to the rear end with the edge of the slide to define a pinless pivot." As described above, the extractor/ indicator in Luger uses a pinned connection. Moreover, as discussed above, Luger does not teach or suggest that "the indicating element is pivotally displaceable without bending by contact with the rim of the cartridge to a loaded-chamber-indication position...." Accordingly, Luger does not anticipate claim 15 which is believed to be allowable. Dependent claims 16-19 depend directly or indirectly from independent claim 15 and include all of its limitations. Accordingly, these dependent claims are believed to be allowable based on the allowability of claim 15 and for the additional limitations added by these claims which further distinguish over the prior art.

Attorney Docket #: E6026-490
App. Serial No.: 10/825,517
Art Unit: 3641
Amendment: February 5, 2007

Luger also does not teach or fairly suggest a pinless loaded chamber indicator as now recited in amended claim 20 (reproduced above). For at least the same reasons discussed above with respect to claims 1 and 15, Luger does not teach or suggest "a housing having an external surface and an edge defining a fulcrum" and "a bar-shaped rigid lever having a first end, a second end, and a mid-portion between the two ends, the lever pivotally engaged with the edge of the housing to define a pinless pivot proximate to the first end, the lever positioned in the housing to contact the rim of the cartridge." Accordingly, Luger does not anticipate claim 20 which is believed to be allowable. Dependent claims 21-23 and 26 depend directly or indirectly from independent claim 20 and include all of its limitations. Accordingly, these dependent claims are believed to be allowable based on the allowability of claim 20 and for the additional limitations added by these claims which further distinguish over the prior art.

Dependent claims 24-26 stand rejected as being obvious under 35 U.S.C. §103(a) over Silveira. Claims 24 and 25 have been cancelled without prejudice or disclaimer thus rendering the rejection moot with respect to these claims. Claim 26 depends from claim 20. For the same reasons presented above with respect to the anticipatory rejection of claim 20 over Silveira, claim 26 is allowable with claim 20 because Silveira does not teach or suggest all the limitations of claim 26. MPEP 2143.02 (citing *In re Royka*, 490 F.2d 981 (CCPA 74)).

Dependent claims 16-19, depending from independent claim 15, stand rejected as being obvious under 35 U.S.C. §103(a) over Jolidon in view of United States Patent 1,028,032 to Krag ("Krag"). For at the same reasons discussed above with respect to the anticipatory rejection of claim 15 over Jolidon, claims 16-19 are allowable with claim 15 because Jolidon does not teach or suggest all the limitations of claim 26. MPEP 2143.02 (citing *In re Royka*, 490 F.2d 981

Attorney Docket #: E6026-490
App. Serial No.: 10/825,517
Art Unit: 3641
Amendment: February 5, 2007

(CCPA 74)). Moreover, Krag does not make up the deficiencies of Jolidon for at least the reason that Krag does not teach or suggest a pinless rigid loaded chamber indicator. Accordingly, claims 16-19 are believed to be allowable.

New claims 31-35 have been added to further clarify Applicant's pinless loaded chamber indicator design. Claim 31 is independent and claims 32-35 are dependent therefrom. Claim 31 requires *inter alia* "a trapping member removably mounted on top of the slide, the trapping member including a first horizontal surface and an adjoining first sloping vertical surface disposed at a first angle to a vertical plane and intersecting the first horizontal surface to form an edge defining a fulcrum; and a rigid indicating lever having a second horizontal surface and an adjoining second sloping vertical surface disposed at a second angle to the vertical plane and intersecting the second horizontal surface to define a pivot point, at least a portion of the first horizontal surface of the trapping member disposed on top of the second horizontal surface of the indicating lever to removably secure the indicating lever to the slide, the edge of the trapping member pivotally engaged with the pivot point of the indicating lever without a pinned connection...." Claims 32-35 add additional limitations to claim 31. New claims 31-35 are fully supported by Applicant's original disclosure at least in FIGS. 4, 10, 13-15 and at paragraphs 0049 and 0064-66. No new matter has been added. The limitations of claims 31-35 are not taught or fairly suggested by any of the cited references, either alone or in combination. Accordingly, these new claims are believed to be allowable.

Applicant thanks the Examiner for the indication of allowable subject matter in claim 6. Claim 6 has been rewritten in independent form to include all the limitations of the claims from

Attorney Docket #: E6026-490
App. Serial No.: 10/825,517
Art Unit: 3641
Amendment: February 5, 2007

which it depends and is in condition for allowance. Claim 7 has been amended to depend from claim 6 and is allowable with claim 6.

CONCLUSION

In view of the foregoing, Applicant respectfully requests reconsideration and allowance of all pending claims. If the Examiner disagrees with the allowability of the claims or if there are any remaining issues that may be resolved by telephone to expedite allowance, the Examiner is kindly requested to contact the Applicant's undersigned representative at 215.979.1554.

Respectfully submitted,

Dated: February 5, 2007

By: 

Frank J. Spanitz Reg. No. 47,104

CUSTOMER NO. 000067812

Duane Morris, LLP
968 Postal Road, Suite 110
P.O. Box 90400
Allentown, PA 18109-0400
Telephone: (215) 979-1550
Telecopier: (610) 264-3295